

Conversely, claimant maintains the ALJ's decision should be affirmed. Claimant argues that not only did he sustain a compensable physical injury on May 19, 2005, when

he was involved in a motor vehicle accident and was trapped in the burning vehicle before he escaped the vehicle just before a gas tank exploded, but also as a result of the accident he has been diagnosed by one psychologist with post traumatic stress disorder which the psychologist stated was directly related to the life threatening accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order. By statute, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are: (1) did the worker sustain an accidental injury; (2) did the injury arise out of and in the course of employment; (3) did the worker provide the employer with timely notice and with timely written claim; and, (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide necessary medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

At a preliminary hearing, a judge has the authority to determine whether an injured worker is in need of additional medical treatment.⁴ Since only jurisdictional issues are subject to review in an appeal from a preliminary hearing, the Board has, in previous cases, held that the ability to directly trace psychological or psychiatric injury to a physical

¹ K.S.A. 2004 Supp. 44-551(b)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

⁴ K.S.A. 2004 Supp. 44-551 and K.S.A. 44-534a.

injury concerns only the nature and extent of the disability. The existence of such relationships are, therefore, a step removed from the jurisdictional milieu, and have no bearing upon the compensability of the claimant's accident and injury. The Board has, for this reason, declined to review the question at this stage of the proceedings.⁵ However, the Board now considers this analysis was wrong.

The question of whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Stated another way, it gives rise to a disputed issue of whether the injury, in this case a psychological condition, arose out of and in the course the employment. The Board's jurisdiction should not rest on whether the injury is physical versus mental or emotional. Furthermore, making such a distinction can have the undesired effect of delaying needed treatment. Accordingly, the Board finds it has jurisdiction of this appeal on the limited question of whether claimant has a psychological condition that is directly traceable to his work-related accident and the resulting physical injury.

Claimant was employed as a truck driver for the respondent. On May 19, 2005, while driving in the course of his employment, the claimant lost control of the truck he was driving and it overturned. The claimant was trapped inside the cab of the truck and a fire started. He managed to free himself from the truck, broke out a window and crawled away from the vehicle shortly before one of the gas tanks exploded. Claimant described the accident in the following manner:

Q. Okay. You had an accident while working for the employer in this matter. Would you describe the accident for us?

A. Yes. I believe it was U.S. 83 and 40 meets. I hit my brakes. They grabbed and then they was nothing and I ended up going across U.S. 40. When I hit a dirt road, my trailer started fishtailing, and next thing I know, I rolled the truck and I was trapped inside it and it was on fire.

I finally got my left arm free after I got my watch off and had to keep tugging on it to get it free. Finally, it got free. I broke the window with a pair of dikes. They're wire cutters.

And started to crawl out and I had to pull on my right leg to get it free 'cause it was stuck. I got outside the truck and the - - we got about three feet away from the truck and the one tank exploded and burnt the truck up.⁶

⁵ See e.g. *Eaton v. Coleman Company, Inc.*, No. 205,158, 1998 WL 695373 (Kan. WCAB Sep. 21, 1998); *Gilman v. Olathe Medical Center*, No. 211,937, 1997 WL 377940 (Jun. 18, 1997).

⁶ P.H. Trans. at 5-6.

The claimant suffered left forearm and rib pain and cuts in the accident and was treated at Logan County Hospital. On May 25, 2005, claimant sought follow up treatment with his family physician, Dr. Fowler, who prescribed some pain medication as well as physical therapy. Claimant was released to return to work. Claimant testified to the following:

Q. Tell us what problems you have today.

A. Well, I have trouble sleeping because I keep reliving the accident. When I get out on the highway in a vehicle, my chest gets real tight and my breathing gets erratic. My pulse goes up. I start -- head aching real bad if I'm driving. So when I go somewhere, I have to have my daughter or my son-in-law take me.⁷

The claimant was evaluated by Dr. Mark D. Goodman, a licensed psychologist. Dr. Goodman diagnosed the claimant with dysthymia with passive-aggressive and anxiety features. The doctor recommended psychotherapy to determine if claimant met the criteria for a diagnosis of Posttraumatic Stress Disorder.

Respondent then referred claimant to Dr. Patrick L. Hughes who examined and evaluated the claimant on August 18, 2005. Dr. Hughes diagnosed claimant with Posttraumatic Stress Disorder, directly and causally attributable to the May 19, 2005 truck accident. The doctor further recommended claimant be provided medication and psychotherapy sessions.⁸

A psychological injury is not compensable under Kansas law unless it is directly traceable to a work-related physical injury.⁹ Respondent has refused to provide psychological or psychiatric treatment on the theory that claimant's diagnosis is related to his accident, but not his injuries. This is a distinction without a difference. Claimant's need for psychiatric treatment is directly attributable to the accident that produced his physical injuries. Had claimant not suffered physical injuries in the accident, respondent's argument would have reflected the prevailing law in this State, that the psychological injury would not have been compensable. Where, as here, the accident provoked both physical and psychological injuries, both are compensable causes of injuries.

The Board finds the claimant's need for psychiatric treatment stems from his work-related accident. He is, therefore, entitled to the medical treatment ordered by the ALJ.

⁷ *Id.* at 7.

⁸ *Id.*, Cl. Ex. 1.

⁹ *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 546 (1994).

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.¹⁰

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated October 11, 2005, is affirmed.

IT IS SO ORDERED.

Dated this 30th day of November 2005.

BOARD MEMBER

c: Steve Brooks, Attorney for Claimant
William L. Townsley III, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹⁰ K.S.A. 44-534a(a)(2).